Filed 10/24/16 Guardianship of Estates of J.S. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

Guardianship of the Persons and Estates of J.S. et al., Minors.	C078511
KRISTINE SCHOROVSKY, Petitioner and Respondent, v. MARY WARD, Objector and Appellant.	(Super. Ct. No. PR15115)

After the parents of six children died in a murder-suicide, Kristine Schorovsky (a family friend) petitioned for guardianship of the person and estate of each of the children. Mary Ward, the children's maternal grandmother, objected to the petition and filed her own petition for guardianship. After a hearing, the superior court granted Schorovsky's guardianship petition, and Ward appeals.

On appeal, Ward contends that the trial court made various legal errors in granting Schorovsky's petition. Since none of Ward's contentions has merit, we affirm.

STATUTORY SCHEME FOR GUARDIANSHIP

"A relative or other person" may petition for guardianship of a minor. (Prob. Code, § 1510, subd. (a).) After the petition has been filed, notice of hearing has been provided to those entitled to notice, and an investigation has been performed, the superior court may hold a hearing to appoint a guardian of the person and a guardian of the estate of the minor, it if appears necessary or convenient. (Prob. Code, §§ 1510; 1511; 1513; 1514, subd. (a).)

With the best interest of the minor in mind, the superior court follows the statutory order of preference in deciding who should have custody of the minor. The statutory order is: (1) "[t]o both parents jointly . . . or to either parent"; (2) "to the person or persons in whose home the child has been living in a wholesome and stable environment"; and (3) "[t]o any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child." (Fam. Code, § 3040, subd. (a); Prob. Code, § 1514, subd. (b)(1).)

"The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward." (Prob. Code, § 1514, subd. (e)(1).) "If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed." (Prob. Code, § 1514, subd. (e)(2).)

BACKGROUND

The murder-suicide occurred on August 10, 2014.

On August 19, 2014, Schorovsky filed a petition for guardianship of the person and estate of J.S. (age 13 at the time), D.S. (age 11), A.D.S. (age six), Pa.S. (age five),

A.L.S. (age three), and Pr.S. (age two). (The guardianship of an older child is not included in this appeal.) On the same day, Schorovsky filed a petition for temporary guardianship of the children. Schorovsky filed a declaration explaining that, after the children's parents died, she took care of the children. Mary Ward, the children's maternal grandmother, had lived near her daughter and grandchildren since 1992 but moved to Oklahoma a year before her daughter's death. Upon returning after the death, Ward went to the Schorovsky residency unannounced and took the children away, which caused additional emotional trauma to the children. Schorovsky believed that taking the children out of school, which had already started, and moving them to Oklahoma with Ward would be detrimental to them.

On August 20, 2014, the court granted Schorovsky temporary guardianship of the six children. And the children were returned to Schorovsky.

On August 28, 2014, Ward filed an objection to Schorovsky's petition, claiming that the proposed guardianship was not in the best interest of the children. Ward alleged that Schorovsky was motivated by the potential of receiving money from the deceased mother, from fundraising efforts on behalf of the children, and from other sources. She also alleged that Schorovsky dissuaded the children from going with Ward by giving them gifts.

On September 3, 2014, Ward petitioned for guardianship of the person and estate of the children. She repeated her allegations from her objection to Schorovsky's guardianship petition, and she argued that the children should be placed with family.

The superior court held a contested hearing on the matter on December 2, 2014. After hearing evidence and argument, the court appointed Schorovsky as guardian of the person and estate of the six children. At the end of the hearing, the court made the following statements, which we paraphrase:

- The primary factor governing the choice of guardian for the children is the children's best interest.

- Schorovsky has provided a stable environment for the children for four months, a substantial period of time.
- It is presumed that removing the children from Schorovsky's care would be detrimental to the children.
- Ward has not shown by a preponderance of the evidence that it is not in the children's best interest to remain with Schorovsky.
- The social services department report, corroborated by testimony at the hearing, established that the Schorovsky household is appropriate for the children.
- There is a bond between Schorovsky and the younger children.
- A court investigator cut short an investigation of Ward because she indicated she was going to dismiss her guardianship petition, but the investigator recommended against guardianship for Ward.
- The children expressed a desire to stay with Schorovsky.
- Allegations made by Ward that Schorovsky had engaged in financial elder abuse in a different matter were unfounded.
- A bankruptcy filed by Schorovsky's husband did not include Schorovsky as a petitioner and was therefore irrelevant.
- Schorovsky has the resources to provide for the children, and their needs have been met.
- Fundraising has been undertaken on behalf of the children, but none of the money has been distributed to Schorovsky; instead, it remains in trust for the children.
- Schorovsky has not requested government aid but is paying for the children's needs from her own pocket.
- The court decided against splitting up the children and sending some of them to Oklahoma with Ward.
- Schorovsky's petition for guardianship of the person and estate of the children is granted.

- Ward is granted visitation rights for periods of visitation in Oklahoma.

Additional facts and procedure are discussed as they become relevant in the discussion below.

OUR ROLE ON REVIEW

"The resolution of a legal dispute involves three steps: (1) establishing the facts; (2) determining the applicable law; and (3) applying the law to the facts. [Citation.] 'The first step, determining the relevant facts, is committed to the trier of the facts and is reviewed on appeal with deference to the factfinder's decision by applying the venerable substantial evidence test. [Citations.] We view the evidence in a light most favorable to the trial court's decision, resolving all conflicts in the evidence and drawing all reasonable inferences in support of that court's findings. [Citation.] In short, we review the evidence but do not weigh it; we defer to the trial court's findings to the extent they are supported by substantial evidence. [Citations.]' [Citation.]

"With respect to the second step in the resolution process, determining the applicable law, we independently review all issues of law raised by the parties. [Citation.]

"The third step, applying the law to the facts, is reviewed in this circumstance under the deferential clearly erroneous standard of review. [Citation.]" (*Guardianship of Vaughan* (2012) 207 Cal.App.4th 1055, 1067.)

DISCUSSION

I

Kyle Schorovsky's Bankruptcy

Evidence was presented at the hearing that Schorovsky's husband, Kyle, was going through bankruptcy. The court heard some evidence but excluded other evidence concerning the bankruptcy. In its oral ruling at the hearing, the court stated: "As far as the bankruptcy, the bankruptcy filing was in the name of Ms. Schorovsky's husband, and she testified that that is going to be dismissed prospectively in May of this year and that

circumstances have changed with regard to their financial ability. There was nothing to the contrary shown as far as their current inability to provide for the children. It appears that they are well taken care of[;] their needs are met."

On appeal, Ward contends the superior court "committed a legal error when it ruled that the Schorovsky bankruptcy was solely husband Kyle Schorovsky's bankruptcy and did not concern proposed guardian Kristine Schorovsky." (Unnecessary capitalization omitted.) To the contrary, the bankruptcy was in Kyle Schorovsky's name only and, in any event, the superior court considered the bankruptcy and found it did not overcome the evidence that Schorovsky was currently capable of taking care of the children.

During the hearing, Ward's counsel questioned Schorovsky about the bankruptcy. Schorovsky maintained that it was solely in her husband's name, which was supported by the actual petition for bankruptcy. Counsel indicated that a company ostensibly owned by Schorovsky (Kystinz) was listed in the bankruptcy filing, but Schorovsky testified that it was a mistake and should not have been included. Also, there was evidence that the Schorovsky's owe more on their home than it is worth. The current value of the home, however, was not established, so the extent to which the debt exceeded the home's value was not established.

Although Ward's argument is rather unfocused, we gather from it that Ward contends: (1) it was inaccurate to characterize the bankruptcy as pertaining only to Kyle Schorovsky because California is a community property state, (2) the Schorovsky's owe more on their home than it is worth, and (3) the bankruptcy was relevant to whether Schorovsky had the ability to manage the funds in the estate of the children.

First, that California is a community property state is not necessarily conclusive as to the property involved in the bankruptcy estate because married people can also hold separate property. (See Fam. Code, §§ 770-772.) Schorovsky testified that the

bankruptcy involved her husband's separate property and the inclusion of a business she owned was a mistake.

Second, that the Schorovsky's home may not be worth as much as they owe on it does not necessarily preclude Schorovsky from being the guardian of the estate of the children.

And third, whether or not the bankruptcy was relevant to Schorovsky's ability to take care of the children, the court, knowing about the bankruptcy, concluded that the children were well cared for under Schorovsky's supervision. (See Prob. Code, § 2650, subd. (h) [guardian of estate *may* be removed if insolvent or bankrupt].)

In other words, even considering the bankruptcy, the superior court did not abuse its discretion in determining that Schorovsky was capable of serving as the guardian of the person and estate of the children.

II

Alleged Financial Elder Abuse

Ward alleges that Schorovsky committed financial elder abuse with respect to Schorovsky's grandmother. Ward does not, however, explain why it matters in this case. For that reason alone (lack of prejudice), the contention is without merit. (See Cal. Const., art. VI, § 13 [no reversal unless miscarriage of justice shown].) In any event the accusation of financial elder abuse was unproven at the hearing.

There was evidence at the hearing that Schorovsky at some unspecified time received $100,000 from her grandmother to help buy a house in Los Molinos. Schorovsky also bought a truck and put in a kitchen with money from her grandmother. The remaining evidence concerning Schorovsky's grandmother was provided in testimony at the hearing by William Kolthoff, who is Schorovsky's uncle (and the grandmother's son). Kolthoff and Schorovsky were involved in litigation over the grandmother's estate after she died.

In 1997, the grandmother suffered a stroke and, as a result, her physical capacity was diminished. However, she later moved from her home in Marin County, where she had received care, to a home in Tracy, where she lived independently. Eventually, the grandmother moved to Los Molinos and Schorovsky became a caretaker for her grandmother. At some unspecified time, Schorovsky obtained a power of attorney over her grandmother, and Schorovsky's name was added to her grandmother's bank account. Schorovsky used money received from her grandmother to buy a truck, also at an unspecified time. After Schorovsky's grandmother died, there was litigation over the distribution of her estate. Kolthoff believed that Schorovsky had misused her relationship with her grandmother to take money from her and that money from the sale of real property was unaccounted for. However, after the grandmother moved to Los Molinos, Kolthoff was not involved in the finances or care of his mother. The dispute over the grandmother's estate was resolved in nonbinding arbitration in which Kolthoff paid money back to the estate and Schorovsky apparently released her right to a $10,000 bequest.

From this evidence, Ward claims that Schorovsky was guilty of financial elder abuse. However, the court stated: "There were allegations of elder abuse brought against Ms. Schorovsky; but those seem to be unfounded because in the testimony that was given by one of the witnesses, Mr. Kolthoff, he indicated that there was, in fact, a dispute, there was litigation and that it was resolved and that, essentially, some of the money had to be paid back by him into the trust. [¶] So, there wasn't any real showing of elder abuse [by] the proposed guardian." Still, Ward claims that the superior court, "failed to apply the correct statute to determine whether proposed guardian Kristine Schorovsky committed financial elder abuse." (Unnecessary capitalization omitted.) (See Welf. & Inst. Code, § 15610.30 [defining financial elder abuse].)

Ward does not explain how the superior court failed to apply the correct statute or how the evidence established elder abuse under the cited statute (Welf. & Inst. Code, §

15610.30), even if Kolthoff's testimony were deemed credible. The superior court may have disbelieved Kolthoff's testimony, in whole or in part, because Kolthoff was an adversary to Schorovsky with respect to the finances of her grandmother (his mother). We note that Ward did not request a statement of decision concerning the basis for the court's decision. (Code Civ. Proc., § 632.)

Therefore, Ward failed to establish financial elder abuse and, even assuming she established financial elder abuse, she failed to demonstrate prejudice.

III

Exclusion of Evidence of Schorovsky's Prior Caregiving

Ward contends that the superior court excluded evidence that Schorovsky housed her own grandmother in, according to the opening brief, "a tiny bedroom in deplorable condition with [a] sheet for a door." Ward claims this evidence would have shown Schorovsky's poor character. But there is no indication in the record on appeal that the superior court excluded such evidence.

Ward quotes the following part of the record on appeal during which counsel for Ward was questioning Schorovsky's uncle, William Kolthoff:

"Q. At some point in time did Kristine Schorovsky become a caregiver for your mom, the sole caregiver for your mom?

"A. Yes.

"Q. And where was that – your mom at that time when she became the sole caregiver?

"A. Los Molinos.

"Q. Let's discuss that. When she took over as a caregiver in Los Molinos, what was the condition of the house for your mother?

"[Counsel for Schorovsky]: Your Honor, again, I would ask when are we talking about?

"[Counsel for Ward]: When are we talking –

"THE COURT: Sustained.

"[Counsel for Ward]: Well, I tried to trace a series of questions.

"Q. We are in Los Molinos. Can you give us a date, please?

"A. That would have been January, around January of 2004.

"Q. All right. And what was the condition of that house that your mother was in?

"[Counsel for Schorovsky]: Objection. Relevance.

"THE COURT: I don't know the relevance of that, [counsel for Ward]. We're not litigating the condition of the house or whether there was sufficient caregiving for the mother.

"[Counsel for Ward]: I will refocus that.

"THE COURT: I'm sorry, but I am going to cut you off if you don't get to the point."

Apparently, Ward would have us believe that this exchange establishes the superior court excluded evidence that Schorovsky kept her grandmother in deplorable conditions. That assertion fails because (1) this exchange in the record does not show that the superior court excluded evidence and (2) Ward does not direct us to a part of the record in which Ward made an offer of proof that Schorovsky kept her grandmother in deplorable conditions.

Ward mentions that an offer of proof was made. But the "offer of proof" on the cited pages was only that: (1) Schorovsky became her grandmother's caregiver, (2) Schorovsky took money from her grandmother, and (3) there was litigation within the family over the grandmother's money. There is no offer of proof about so-called "deplorable conditions." (See Cal. Rules of Court, rule 8.204(a)(1)(C) [appellant bears burden of supporting contentions with record citations].)

Because Ward has failed to establish from the record on appeal that the trial court excluded relevant evidence, the contention is without merit.

IV

Presumption that Removing Children Would Be Detrimental

At the guardianship hearing, the superior court applied the preference found in Family Code section 3040, subdivision (a) that, if the parents are not available to take custody, the preference for child custody is with "the person . . . in whose home the child has been living in a wholesome and stable environment."[1] (Fam. Code, § 3040, subd. (a)(2).) Ward contends that the superior court erred by not choosing her because she is a family member. The contention is contrary to the statute and without merit.

Ward acknowledges that the children had been living in Schorovsky's home at the time of the guardianship hearing. However, she claims that she should have been the preferred custodian of the children because (1) Schorovsky did not give her notice of the temporary guardianship proceedings that led to the children being placed with Schorovsky and (2) Ward, being the grandmother and having helped raise the children before she moved to Oklahoma, should be considered a surrogate parent. For these propositions, however, Ward does not provide authority that (1) failure to give notice of a temporary guardianship proceeding somehow disqualifies a petitioner from being appointed guardian or (2) a grandparent who helps raise a child is a surrogate parent for

---

[1] Family Code section 3040, subdivision (a) provides:

"Custody should be granted in the following order of preference according to the best interest of the child . . . :

"(1) To both parents jointly . . . .

"(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

"(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child."

the purpose of applying the preference. The contentions are therefore without merit. (*Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794.)

In any event, the parents were not available. Therefore, the superior court properly preferred Schorovsky, who had been providing the children a wholesome and stable environment.

V

Exclusion of Evidence of Schorovsky's Relationship with Children

Ward contends the trial court improperly excluded relevant evidence concerning Schorovsky's relationship with the children. In support of this contention, she quotes a portion of the reporter's transcript in which counsel for Ward asked Ward several questions concerning Schorovsky's relationship with the children. As to most of these questions, counsel for Schorovsky objected that the question lacked foundation. Each of the foundational objections was sustained. Ward's contention fails because the superior court did not sustain the objections on relevance grounds; instead, the objections were sustained on foundational grounds. In other words, the superior court did not improperly exclude relevant evidence; instead, counsel for Ward failed to present the evidence in a way that was consistent with rules of evidence requiring that the questioner must establish preliminary facts before asking questions based on those facts. (See Evid. Code, § 403.)

VI

Failure to Articulate and Apply Probate Code

Ward contends that the superior court "failed to articulate and apply the correct Probate Code for determining guardianship of the estate." (Unnecessary capitalization omitted.) This contention fails because: (1) Ward did not request a statement of decision and, (2) in any event, the court considered the ability of Ward to manage and preserve the estate.

A party may request a statement of decision after a court trial to ask the trial court to explain the factual and legal basis of its decision. (Code Civ. Proc., § 632.) If neither party requests a statement of decision, we apply the doctrine of implied findings. We presume that the trial court made all necessary factual findings to support the judgment. (*Michael U. v. Jaime B.* (1985) 39 Cal.3d 787, 792-793, superseded by statute on another issue as noted in *In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449.)

Since no statement of decision was requested in this case, we presume the superior court applied the correct statutes in making its decision, even if the court did not say it was applying those statutes.

Ward asserts that the superior court failed to apply Probate Code section 1514, subdivision (e)(1), which requires the court to take into account the proposed guardian's ability to manage and preserve the estate.[2] The court, in its oral ruling, found that (1) Schorovsky has the resources to provide for the children, (2) the children's needs have been met, and (3) Schorovsky has not requested government aid but is paying for the children's needs from her own pocket. This is evidence that Schorovsky had the ability to manage and preserve the estate of the children. The superior court did not err.

VII

Substantial Evidence to Support Guardianship

Under the heading of a substantial evidence argument, Ward contends: (1) Schorovsky committed financial elder abuse, (2) Schorovsky is involved in her husband's bankruptcy proceedings, (3) Schorovsky was involved in fundraising on behalf of the children, and (4) Schorovsky received retroactive Social Security benefits on

---

[2] Probate Code section 1514, subdivision (e)(1) provides: "The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward."

behalf of the children because of the deaths of their parents after the hearing in this case. While Ward makes these factual arguments (two of which we have already rejected), she does not explain how these factual arguments establish error in making Schorovsky the guardian of the children. Neither does she provide authority for her contention that the evidence was insufficient. Given these deficiencies in the argument, we need not search out the relevant law or attempt to apply that law to the facts (many of which are only allegations or pertain to events that occurred after the hearing). (*Amato v. Mercury Casualty Co., supra,* 18 Cal.App.4th at p. 1794.)

DISPOSITION

The order granting Schorovsky's guardianship petition is affirmed. Ward must pay Schorovsky's costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

NICHOLSON, J.

We concur:

RAYE, P. J.

BLEASE, J.